

STATE OF MICHIGAN
COURT OF APPEALS

JAMES TAYLOR, Personal Representative of the
Estate of AFRADITA TAYLOR, Deceased,

Plaintiff-Appellee,

v

RAMALINGESWARA YALAMANCHI, M.D.,
R.R. YALAMANCHI, M.D., P.C., and PANKAJ
K. VIJ, M.D.,

Defendants,

and

GRAHAM W. LONG, M.D., WILLIAM
BEAUMONT HOSPITAL, DAVID M.
MONTGOMERY, M.D., and MITUL K. PATEL,
M.D.,

Defendants-Appellants.

JAMES TAYLOR, Personal Representative of the
Estate of AFRADITA TAYLOR, Deceased,

Plaintiff-Appellee,

v

RAMALINGESWARA YALAMANCHI, M.D.,
and R.R. YALAMANCHI, M.D., P.C.,

Defendants-Appellants,

and

UNPUBLISHED
January 18, 2007

No. 262763
Oakland Circuit Court
LC No. 03-053470-NH

No. 262771
Oakland Circuit Court
LC No. 03-053470-NH

GRAHAM W. LONG, M.D., WILLIAM
BEAUMONT HOSPITAL, DAVID M.
MONTGOMERY, M.D., MITUL K. PATEL,
M.D., and PANKAJ VIJ, M.D.,

Defendants.

JAMES TAYLOR, Personal Representative of the
Estate of AFRADITA TAYLOR, Deceased,

Plaintiff-Appellee,

v

No. 262777
Oakland Circuit Court
LC No. 03-053470-NH

RAMALINGESWARA YALAMANCHI, M.D.,
R.R. YALAMANCHI, M.D., P.C., GRAHAM W.
LONG, M.D., WILLIAM BEAUMONT
HOSPITAL, DAVID M. MONTGOMERY, M.D.,
and MITUL K. PATEL, M.D.,

Defendants,

and

PANKAJ VIJ, M.D.,

Defendant-Appellant.

Before: White, P.J., Whitbeck, C.J. and Davis, J.

PER CURIAM.

In this consolidated appeal, defendants appeal by leave granted an opinion and order denying their respective motions for summary disposition based on the statute of limitations. This is a medical malpractice case, and the relevant facts are undisputed. We reverse.

Plaintiff's decedent, Afradita Taylor (decedent), received treatment from defendants in April and May 2000. She died on May 24, 2000. On April 18, 2001, plaintiff obtained letters of authority as personal representative of decedent's estate. Two years later on April 18, 2003, plaintiff mailed a notice of intent to file a claim. On October 17, 2003, plaintiff filed the complaint.

Appellate courts review de novo rulings on summary disposition motions. *Waltz v Wyse*, 469 Mich 642, 647; 677 NW2d 813 (2004). This Court also reviews de novo whether a statute

of limitations bars a claim. *Farley v Advanced Cardiovascular*, 266 Mich App 566, 570-571; 703 NW2d 115 (2005). Questions of law and interpretations of statutes are also reviewed de novo. *Office Planning Group, Inc, v Baraga-Houghton-Keweenaw Child Dev Bd*, 472 Mich 479, 488; 697 NW2d 871 (2005). MCL 600.5805 provides a two-year limitations period for a medical malpractice claim or action. A medical malpractice claimant must give defendants notice of his intent to sue at least 182 days before filing a complaint. MCL 600.2912b(1). Doing so tolls the statute of limitations. MCL 600.5856(d)¹; *Waltz, supra*, p 644 n 1. The two-year limitations period is tolled only if that period would expire during the 182-day notice period. MCL 600.5856(d).

The wrongful death savings statute provides an independent two-year period within which a wrongful death claimant may commence an action: “If a person dies before the period of limitations has run . . . an action . . . may be commenced . . . at any time within 2 years after letters of authority are issued although the period of limitations has run.” MCL 600.5852. “Thus, § 5852 provides an exception to the otherwise-applicable limitation periods by permitting the personal representative of a decedent’s estate to file a wrongful death action up to two years after letters of authority are issued, subject to a three-year ceiling.” *Waltz, supra*, p 645 n 5. However, our Supreme Court has held that the saving period is not tolled by filing of a notice of intent, and this Court has held that our Supreme Court’s decision in that regard applies retroactively. *Mullins v St Joseph Hosp*, 271 Mich App 503, 509; 722 NW2d 666 (2006). This Court has further held that “plaintiffs who filed before *Waltz*, but incorrectly and detrimentally relied on their affidavit of merit to toll the running of the saving statute” may not use equitable tolling to avoid the inequitable results of that retroactive application. *Ward v Siano*, Mich App __; __ NW2d __ (2006). Therefore, we are bound to conclude that plaintiff’s notice of intent, sent on April 18, 2003, could not have prevented the expiration, on that same date, of the two-year wrongful death savings provision.

Reversed.

/s/ Helene N. White
/s/ William C. Whitbeck
/s/ Alton T. Davis

¹ This section is now designated MCL 600.5856(c), pursuant to 2004 PA 87; see also *Mullins v St Joseph Hosp*, 271 Mich App 503, 509; 722 NW2d 666 (2006). The designation used in this opinion is the designation in place at the dates relevant to the actions below.